§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(g) *Interim status boilers and industrial furnaces.* For the purpose of determining feasibility of compliance with the performance standards of § 266.104 through 266.107 of this chapter and of determining adequate operating conditions under § 266.103 of this chapter, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of § 266.103 of this chapter must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in § 270.22(a)(6). The Director must announce his or her intention to approve of the trial burn plan in accordance with the timing and distribution requirements of paragraph (d)(3) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application must complete the trial burn and submit the results specified in paragraph (f) of this section with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the Director to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the Director.

[FR Doc. 95–29896 Filed 12–8–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[SC–029–1–7177a; FRL–5316–5]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the South Carolina State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the South Carolina State Implementation Plan (SIP) to incorporate new permitting regulations and to allow the State of South Carolina to issue Federally enforceable state construction and operating permits (FESCOP). On July 12, 1995, the State of South Carolina through the Department of Health and Environmental Control (DHEC) submitted a SIP revision which updates the procedural rules governing the issuance of air permits in South Carolina and fulfills the requirements necessary for a state FESCOP program to become Federally enforceable. In order to extend the Federal enforceability of South Carolina's FESCOP program to hazardous air pollutants (HAPs), EPA is also approving South Carolina's FESCOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that South Carolina may issue Federally enforceable construction and operating permits for HAPs.

DATES: This final rule will be effective February 11, 1996, unless adverse or critical comments are received by January 10, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Scott Miller at the EPA Regional office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is (404) 347–3555 extension 4153. Reference file SC029.

SUPPLEMENTARY INFORMATION: On July 12, 1995, the State of South Carolina through the DHEC submitted a SIP revision designed to allow South Carolina to issue FESCOP which conform to EPA requirements for Federal enforceability as specified in a Federal Register notice, ''Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules.'' (See 54 FR 22274, June 28, 1989). This voluntary SIP revision allows EPA and citizens under the Act to enforce terms and conditions of state-issued minor source construction and operating permits. Construction and operating permits that are issued under the State's minor source construction and operating permit program that is approved into the State SIP and under section 112(l) will provide Federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable construction and operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements. EPA notes that the State will continue to issue construction and operating permits that are not intended to be Federally enforceable under regulations found at South Carolina Air Pollution Control Regulation (SCAPCR) 61–62.1 Section II.A and Section II.B.

In the aforementioned June 28, 1989, Federal Register document, EPA listed five criteria necessary to make a state agency's minor source construction and operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of the State's minor source construction and operating permit program.

The first criterion for a State's construction and operating permit program to become Federally enforceable is EPA's approval of the permit program into the SIP. On July 12, 1995, the State of South Carolina submitted through the DHEC a SIP revision designed to meet the five criteria for Federal enforceability. This action will approve these regulations

into the South Carolina SIP, and therefore satisfy the first criterion for Federal enforceability.

The second criterion for a state's construction and operating permit program to be Federally enforceable is that the regulations approved into the SIP must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. SCAPCR 61–62.1 Section II imposes a legal obligation that construction and operating permit holders adhere to the terms and limitations of the construction or operating permit intended to be Federally enforceable. Every construction and operating permit must include all applicable State and Federal requirements. In addition, the permits must include monitoring, recordkeeping, efficiency levels for add-on air pollution control devices, and other provisions to show compliance with the terms and conditions of the construction/operating permit. Hence, the second criterion for Federal enforceability is met.

The third criterion for a state's construction and operating permit program to be Federally enforceable is that the state construction and operating permit program must require that all emissions limitations, controls, and other requirements imposed by the permit be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''Federally enforceable'' (e.g. standards established under sections 111 and 112 of the Act). SCAPCR 61–62.1 Section II G(8)(b)(vii) mandates that every construction and operating permit that a facility intends to be Federally enforceable must include all applicable State and Federal requirements. SIP requirements are applicable Federal requirements and therefore, will not be waived or made less stringent since they must be included in any permit intended to be Federally enforceable. Therefore, the third criterion for Federal enforceability is met.

The fourth criterion for a state's construction and operating permit program to be Federally enforceable is that limitations, controls, and requirements in the operating permits be permanent, quantifiable, and otherwise enforceable as a practical matter. SCAPCR 61–62.1 Section II G(4)(f) includes a verbatim incorporation of this requirement. Also, with respect to this criterion, enforceability is essentially provided on a permit-by-permit basis, particularly by writing practical and quantitative enforcement procedures into each permit. Therefore, the fourth criterion for Federal enforceability is met.

The fifth criterion for a state's construction and operating permit program to be Federally enforceable is providing EPA and the public with timely notice of the proposal and issuance of such permits, providing EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be Federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. SCAPCR 61–62.1 Section II G(5)(a) requires that a permit intended to be Federally enforceable shall be provided to EPA and the public for a period of 30 days prior to its issuance. In addition, if the State determines that a public hearing is required the State will give notice of a public hearing 30 days before it occurs. SCAPCR 61–62.1 Section II G(4)(g) requires DHEC to provide to EPA on a timely basis a copy of each proposed (draft permit) or final permit intended to be Federally enforceable. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review under the South Carolina FESCOP program will not be Federally enforceable. Hence, the fifth criteria for Federal enforceability is met.

In addition to meeting the five criteria for issuance of Federally enforceable construction and operating permits, the State provides for the issuance of Federally enforceable general permits which may cover several air pollution sources in a source category with one permit. These regulations mirror the part 70 regulations found at 40 CFR 70.6(d) which govern the issuance of title V general permits.

In addition to requesting approval into the SIP, South Carolina also requested on July 12, 1995, approval of its FESCOP program under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAPs through the issuance of Federally enforceable state construction and operating permits. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants.

EPA believes that the five criteria for Federal enforceability are also appropriate for evaluating and approving FESCOP programs under section 112(l). The June 28, 1989, Federal Register document did not specifically address HAPs because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, document, a FESCOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FESCOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the CAA. (See 58 FR 62262, November 26, 1993.) EPA currently anticipates that these regulatory criteria, as they apply to FESCOP programs, will mirror those set forth in the June 28, 1989, Federal Register document. The EPA also anticipates that since FESCOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit potential to emit of HAPs directly under section 112(l) prior to the Subpart E revisions. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is to say, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is

approving South Carolina's FESCOP program so that South Carolina may issue Federally enforceable construction and operating permits as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes South Carolina's FESCOP program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, Federal Register document is met. That is to say, South Carolina's program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes South Carolina has demonstrated that it will provide for adequate resources to support the FESCOP program. EPA expects that resources will continue to be adequate to administer that portion of the State's minor source construction and operating permit program under which Federally enforceable construction and operating permits will be issued since South Carolina has administered a minor source construction and operating permit program for a number of years. EPA will monitor South Carolina's implementation of its FESCOP program to ensure that adequate resources are in fact available. EPA also believes that South Carolina's FESCOP program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in South Carolina's FESCOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes South Carolina's program is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as major sources by obtaining Federally enforceable limits on potential to emit.

Eligibility for Federally enforceable permits extends not only to permits issued after the effective date of this rule, but also to permits issued under the State's current rule prior to the effective date of today's rulemaking. If the State followed its own regulation, each issued permit that established a title I condition (e.g., for a source to have minor source potential to emit) was subject to public notice and prior EPA review.

Therefore, EPA will consider all such construction and operating permits which were issued in a manner consistent with both the State regulations and the five criteria as Federally enforceable upon the effective date of this action provided that any permits that the State wishes to make Federally enforceable are submitted to EPA and accompanied by documentation that the procedures approved today have been followed. EPA will expeditiously review any individual permits so submitted to ensure their conformity with program requirements.

With South Carolina's addition of these provisions and EPA's approval of this revision into the SIP, South Carolina's FESCOP program satisfies the criteria described in the June 28, 1989, Federal Register document.

Final Action

In this action, EPA is approving South Carolina's air permitting regulations as submitted on July 12, 1995. EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 9, 1996 unless, within 30 days of its publication, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 9, 1996.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP Actions

SIP approvals under 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: September 20, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart PP—South Carolina

2. Section 52.2120 is amended by adding paragraph (c)(40) to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

(40) The minor source operating permit program for South Carolina, submitted by the Department of Health and Environmental Control on July 12, 1995, and as part of the South Carolina SIP.

(i) Incorporation by reference.

(A) Regulation 61–62.1, Section I.3, 13, 19, 50, 72, and 73, Section II.F.2, Section II.F.2.e, Section II.G, and Section II.H of the South Carolina SIP which became effective on June 23, 1995.

(ii) Other material. None.

[FR Doc. 95–30110 Filed 12–8–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300406; FRL–4989–6]

RIN 2070–AB78

Carbofuran; Tolerance Extension for Canola

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide 2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate (common name ''carbofuran'') and its metabolites in or on canola at 1.0 part per million (ppm) for an additional 1-year period, to February 22, 1998. EPA is issuing this rule on its own initiative following a request from the U.S. Canola Association to allow the use of carbofuran on canola in the 1996 growing season.

EFFECTIVE DATE: This regulation becomes effective December 11, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300406], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM 1B2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP-300406] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; e-mail: edwards.dennis @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of November 8, 1994 (59 FR 55605), which announced that on its own initiative and under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), it proposed a time-limited, regionally restricted tolerance for the residues of carbofuran and its metaboites in or on canola at 1.0 ppm. EPA proposed the tolerance because canola treated with carbofuran may not be processed in the U.S. and must be exported to Canada. A 2-year time-limited tolerance was established by a rule in the Federal Register of February 22, 1995 (60 FR 9781), with an expiration date of February 22, 1997. Registrations associated with this tolerance will be regionally restricted to Idaho, Minnesota, Montana, North Dakota, and Washington.

In Federal Register of October 25, 1995 (60 FR 54685), EPA issued a notice of receipt of a request from the U.S. Canola Association asking for a 1-year extension of the canola tolerance. This extension would then allow the use of carbofuran on canola in the 1996 growing season. The use of carbofuran